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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 12, 13, and 18**

**[FAC 2005-83; FAR Case 2015-010; Item VI; Docket No. 2015-0010; Sequence No. 1]**

**RIN 9000-AN06**

**Federal Acquisition Regulation; Permanent Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act (NDAA) for Fiscal Year 2015 that makes permanent the authority to issue solicitations using special simplified procedures for acquisition of certain commercial items.

**DATES:** Effective: **[Insert date 30 days after publication in the FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 for clarification of

content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-83, FAR Case 2015-010.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This is a final rule to amend FAR subparts 13.5 and 18.2 to implement section 815 of the NDAA for Fiscal Year 2015 (Pub. L. 113-291). Section 815 amends section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 10 U.S.C. 2304 note) to make permanent the test program for special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$6.5 million (\$12 million for certain acquisitions). Conforming changes are made in parts 12, 13, and 18.

**II. Publication of this final rule for public comment is not required by statute**

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates

to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it makes permanent a statutory authority that currently exists within the FAR.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 12, 13, and 18**

Government procurement.

**Dated: June 18, 2015.**

William Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 13, and 18 as set forth below:

1. The authority citation for 48 CFR parts 12, 13, and 18 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

#### **PART 12—ACQUISITION OF COMMERCIAL ITEMS**

2. Amend section 12.203 by revising the third sentence to read as follows:

##### **12.203 Procedures for solicitation, evaluation, and award.**

\* \* \* For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$6.5 million (\$12 million for acquisitions as described in 13.500(c)), including options, contracting activities may use any of the simplified procedures authorized by subpart 13.5.

#### **PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

##### **13.000 [Amended]**

3. Amend section 13.000 by removing from the second sentence "13.500(e))" and adding "13.500(c))" in its place.

##### **13.003 [Amended]**

4. Amend section 13.003 by removing from paragraphs (c)(1)(ii) and (g)(2) "13.500(e))" and adding "13.500(c))" in its place.

**13.303-5 [Amended]**

5. Amend section 13.303-5 by removing from paragraph (b) (2) "13.500(e))" and adding "13.500(c))" in its place.

**Subpart 13.5—Simplified Procedures for Certain Commercial Items**

6. Revise the subpart 13.5 heading to read as set forth above.

7. Revise section 13.500 to read as follows:

**13.500 General.**

(a) This subpart authorizes the use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$6.5 million (\$12 million for acquisitions as described in 13.500(c)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of these simplified procedures is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and

awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 3305, 3306, and chapter 37, Awarding of Contracts.

(b) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in subpart 12.3.

(c) Under 41 U.S.C. 1903, the simplified acquisition procedures authorized in this subpart may be used for acquisitions that do not exceed \$12 million when—

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

### **13.501 [Amended]**

8. Amend section 13.501 by—

a. Removing from paragraph (a)(1)(ii) "an acquisition under the authority of the test program for commercial items at" and adding "that the procedures in FAR subpart 13.5 were used in accordance with" in its place; and

b. Removing from paragraph (b)(1) the word "test".

#### **PART 18—EMERGENCY ACQUISITIONS**

9. Amend section 18.201 by revising paragraph (e) to read as follows:

##### **18.201 Contingency operation.**

\* \* \* \* \*

(e) Simplified procedures for certain commercial items. The threshold limits authorized for use of this authority may be increased for acquisitions to support a contingency operation. (See 13.500(c)).

8. Amend section 18.202 by—

a. Removing from paragraph (c) "13.500(e))" and adding "13.500(c))" in its place; and

b. Revising paragraph (d).

The revision reads as follows:

##### **18.202 Defense or recovery from certain attacks.**

\* \* \* \* \*

(d) Simplified procedures for certain commercial items. The threshold limits authorized for use of this



authority may be increased when it is determined the acquisition is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See 13.500(c)).

**[BILLING CODE 6820-EP]**

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